



U.S. Citizenship  
and Immigration  
Services

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FILE:



WAC 05 084 75195

Office: CALIFORNIA SERVICE CENTER

Date: AUG 22 2007

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The CSC director determined that the applicant failed to establish he had continuously resided in the United States since December 30, 1998 and been continuously physically present in the United States since January 5, 1999. The director also found that the applicant failed to provide evidence to establish his nationality and identity as well as his eligibility for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he is applying for TPS as a minor dependent of a Honduran citizen who is a TPS beneficiary. He also submits additional documents.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by CIS, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted until January 5, 2009, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On appeal, the applicant states that he is applying for TPS as a minor dependent of a Honduran citizen who is a TPS beneficiary. He also submits copies of his birth certificate with an English translation, his Honduran passport, his mother's employment Authorization Card under the category "A-12", and some school records from Overbrook Senior High School.

The Honduran passport submitted on appeal has overcome the director's grounds for denial on the basis of lack of evidence of the applicant's nationality and identity.

The applicant also claims on appeal that he is eligible for TPS because his mother has been granted TPS. However, while regulations may allow a child of TPS beneficiaries to file his or her application after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS.

While the child of an eligible TPS registrant is eligible to submit a late initial registration, the child is still required to meet the residence physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c).

By his own admission, the applicant arrived in the United States on June 25, 2003, a date subsequent to the eligibility period. Therefore, he cannot satisfy the residence and physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision to deny the application for TPS will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.